GREAT LAKES RURAL AUSTRALIANS FOR REFUGEES

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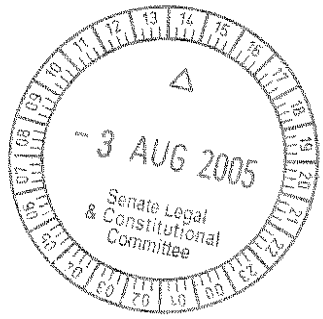

The Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
CANBERRA ACT 2600

Submission to the Inquiry into the administration and operation of the Migration Act 1958

The members of Great Lakes Rural Australians for Refugees welcomes the opportunity to comment on issues raised in the terms of reference of the above Inquiry.

Ministerial Responsibility

It is an established convention of the Westminster Parliamentary System as practiced in Australia that Ministers are responsible to Parliament for the performance of their Departments and, when significant failures occur in any of them, the Minister responsible should resign or be dismissed. The Palmer Report has shown that the Immigration part of DIMIA has been seriously and comprehensively dysfunctional over many years and that this is very largely a result of on-going senior management failure. Either the Minister (and her predecessor) were aware of this state of affairs or they were not. To be unaware is only marginally less incompetent than to be aware and do nothing. Whichever was the case, both the present Minister and her predecessor should be dismissed from ministerial office.

Though the Senate itself has no power to dismiss a Minister, we believe that its Legal and Constitutional Committee should make it abundantly clear that it rejects the Prime Minister's claim that because the present Minister was not "directly responsible for significant failings or mistakes", she should be allowed to remain in office. For the Senate to leave the Prime Minister's definition of ministerial responsibility unchallenged would set a very dangerous precedent for the future of Australian Parliamentary Democracy.

It is good to note that the Premier of Queensland still upholds the established convention. Even though his Health Minister was probably not "directly responsible" for allowing a criminally incompetent surgeon to wreak havoc in Queensland for so long, it was right that he should be dismissed after such a serious on-going failure of management was revealed in his department.

The Financial Cost of the Operation of the Act over the past 5 years.

We trust that the Committee will consider it as within its terms of reference to consider the financial costs incurred by DIMIA and other government agencies in the administration and operation of the Act. The very limited information on costs that has been made public suggests that total costs have run into billions of dollars. When Julian Burnside QC claimed in February 2004 in front of Minister Vanstone that the cost of the "Pacific Solution" alone "has cost us about $1000 million", she made no attempt to deny this (see appendix B).

We believe that both the cost of chosen policies (as opposed to other policies that could have been adopted to obtain the same extent of "border protection") and the cost of maladministration of these policies should be scrutinized in detail by the Committee. We hope the Committee will question Ministers and senior officials from all relevant departments and seek relevant advice from the Auditor General. We see a strong probability that this scrutiny will reveal that the public interest in this area could have been well served at far less financial cost (let alone human cost) than has in fact been incurred.

The Impact of Mandatory Detention on Detainees.

The very act of detaining people for a prolonged or indefinite length of time is deleterious to the physical and mental health of the detainee. The forced detention process on refugees and asylum seekers has a far greater impact due to the fact that most asylum seekers have experience considerable trauma in their country of origin.

It is accepted by most Australians that refugees and asylum seekers be detained for a short time, say up to three months, to allow for the processing of their claims and health checks etc. After that time, and if no criminal record is found, they ought to be released into the community and report to authorities from time to time.

The prison-like structure of Australian detention facilities contributes to the intimidation of detainees. The fact that Baxter Immigration Detention Facility (IDF) has been designed and purposely built and as a high security prison, is to be abhorred. Prison authorities no longer build prisons in the design of Baxter IDF due to the deleterious effect on the mental health of prisoners. One has to question why the Federal Government chose to build a facility of that design to accommodate refugees and others detained for non-criminal reasons.

The siteing of IDF's in very isolated barren parts of the country is done to intimidate the detainees but it also creates numerous difficulties in providing much needed services, such as medical, psychiatric and legal services. Staffing a facility in remote areas is also difficult, and could lead to employing staff that is not really suitable to care for people who are in a distressed state. It is hard to believe DIMIA was not aware of these shortcomings when choosing such locations.

Mick Palmer in his recent report on the detention of Cornelia Rau commented, "Baxter sits in the scrub 10 Kilometres outside Port Augusta. Such a hostile, distant

setting is a deliberate part of this country's deterrence policy". The report goes on to note, "the facilities at Baxter are modelled on prison facilities, and the operating regime is based on prison norms. Most of the guards have worked in prisons". The report also states, 'There is an enduring tension between containment and care, and the emphasis at Baxter is on containment'.

There are many **reported incidences of detainees being abused** by guards while in detention. For instance, one young man was a bashed by several guards on the first Easter that Baxter was opened. His injuries were not properly assessed or treated (see Appendix A). A visitor friend, through the correct channels, reported the incident to DIMIA but DIMIA took no action on the complaint. The report of this incident is only one example of many of such cases that GLRAR members have encountered.

Privatisation of Detention Centre Management.

Any privately run business has to show a profit to the shareholders and the privatisation of Australian detention facilities is no exception. History provides us with an example of the perils of privatising a prison system when the British Government privatised the deportation of convicts to Australia in the Second Fleet. Overcrowding, poor food and no provision of a Ships Surgeon resulted in one third of the convicts dying on the voyage. When Government has the responsibility of care to any group, the most satisfactory system of delivering that care ought to be through a government controlled body with no profit motive influencing the quality of care. Detainees report to their friends that they are expected to do domestic work, such as lawn mowing, kitchen duties, serving in dining room, and they are paid one dollar per hour. Many detainees want to work, however, the contract between GSL and the government ought to be examined by the Committee to determine what cost for the provision of these routine services is charged to the taxpayer.

The standard of care of detainees is always weighed against the cost of the delivery of service. Detainees have reported to their friends many times incidences such as-

- Poor food, not sufficient food provided for vegetarians.
- Meals when the meat was "off"
- Once or twice the food had maggots in it.
- When no vegetarian meal was provided the detainee was told to have bread and milk.
- Only one television and pool table in a compound accommodating seventy-two men.

The delivery of health care to detainees is also governed by the profit motive. Instances have been noted when more advanced treatments for ailments have been refused due to the cost. When a guard or attendant has not considered an injury to be a problem they have not sought a medical opinion at the time (see Appendix A).

Mental illness in people who are being detained for an unspecified time or long term is most common. Many of the asylum seekers being detained in Australian IDF's are receiving some form of medication to treat depression. Suicide and attempted suicides are a common occurrence. This situation is to be deplored. It is totally unacceptable to inflict a situation on people that produces a mental illness; it is a

crime against humanity and quite contrary to the International Conventions Australia is a signatory to.

The provision of psychiatric services to Baxter IDF in particular is very inadequate. Counselling services are kept to a minimum, (for obvious economic reasons). A number of the asylum seekers suffer from Post Traumatic Stress Disorders that need expert psychiatric treatment if they are to recover, or even to achieve an improvement. Their conditions often remain poorly treated to the point where they become psychotic. The standard of care for those suffering mental illness is a clear example of failure of duty of care by the government.

The punitive management and isolation system that has been a feature of the detention centres is positively draconian, and should be discontinued immediately. Asylum seeker supporters have assumed that the protocols used in the 'Management' unit and the block 'Red One' at Baxter IDF were created by the Centre Management. However, in the Palmer Report into the Cornelia Rau Case, Mick Palmer states, 'Anna's life in Red One was run according to "rigid, step-by-step protocols" designed in Canberra by the Immigration Department and imposed as an inflexible, disciplinary regime in Baxter'. The staff on the ground had long been trying to persuade Immigration to reform these rules but, Palmer reports, 'The speed of response from Canberra to urgent operational concerns was described as "glacial".'

Detainees are told that confinement in 'Management' is to instill respect for "Australian ways" in them. This is absurd. Under Global Solutions Limited (GSL) the length of incarceration in 'Management' has been greatly increased. Detention can be from one to two months. Isolating people in this manner is unacceptable and designed to oppress. The Committee should question whether this regime was solely GSL's idea or introduced on instructions from DIMIA.

The Appeals Process

One of the many systemic weaknesses revealed in DIMIA's handling of asylum seekers has been the operation of the Refugee Review Tribunal (RRT) process under which the initial assessment of their status is reviewed. The Tribunal is normally a single individual appointed by DIMIA (technically by its Minister). While RRT's have often over-turned initially adverse assessments, there have been too many cases where failure to do this has derived from manifest incompetence (see pp 14 & 15 of Appendix B)

There is also evidence that some RRT's have been seriously over-worked, while many have proved unqualified to assess the sort of evidence that is put before them, such as the differences in culture and language between tribes in Afghanistan. Though some registered Immigration Agents have done fine work on behalf of their clients, far too many have shown ignorance and incompetence equal to that of RRT's.

Such systemic injustice within DIMIA has been exacerbated by the Government's on-going determination to deny asylum seeker access to the Courts and, when this has proved impossible, to make it as difficult as it could. Philip Ruddock initiated this

policy when he was Minister for Immigration and has vigorously pursued it as Attorney General. The Committee may like to find out how much public money has been spent in attempting to deny human rights to asylum seekers through the Australian Courts.

Submission prepared on behalf of the members of Great Lakes Rural Australians for Refugees Group by:

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References: Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau, by Mick Palmer, OA APM.

Appendix (A) An excerpt from a letter sent to Kathleen Smith by a young Afghan man in Baxter IDF dated 8/5/03

Appendix (B) A copy of the Speech at the Melbourne Rotary Breakfast, 17 February 2004 by Julian Burnside QC, Published with permission April 2004